

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6769 of 1990

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

NL DOCTOR

Versus

STATE OF GUJARAT

Appearance:

MR GT DAYANI for Petitioner
M/S PATEL ADVOCATES for Respondent No. 1
NOTICE SERVED for Respondent No. 2
MR KH BAXI for Respondent No. 5
RULE SERVED for Respondent No. 6, 7, 8, 9,10

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 22/02/2000

ORAL JUDGEMENT

Heard the learned advocates.

The petitioner before this Court is the former

Government servant. The petitioner joined the Government service in the year 1954 as a Junior Assistant. On re-organisation of the States, in the year 1960, his service was allocated to the State of Gujarat. Since then, the petitioner was promoted to the post of Senior Assistant, Superintendent [now Section Officer], Under Secretary and the Deputy Secretary. The petitioner retired from service on reaching the age of superannuation in the year 1984 as a Deputy Secretary. Since his retirement, he was re-employed as a Law Officer by the Gujarat Water Supply & Sewerage Board.

It appears that the petitioner had some grievance in respect of his promotion to the post of Senior Assistant and consequent promotion to the post of Superintendent. The petitioner, therefore, preferred Special Civil Application No. 1573 of 1975 before this Court. The said petition was partially allowed on 20th February, 1978. The Court [Coram : Mr. Justice N.H Bhatt] directed the respondents to examine the case of the petitioner afresh and to review the promotion made from the cadre of Junior Assistant to Senior Assistant and also to reconsider his case for placement in the Select list. Pursuant to the said order, the petitioner was granted deemed promotion to the post of Senior Assistant with effect from 1st May, 1959. Feeling aggrieved, the petitioner preferred Letters Patent Appeal No. 77 of 1979. The appeal was allowed on 1st December, 1986. The Bench [Coram : Messrs. Justice R.C Mankad & S.A Shah]; speaking through Mr. Justice S.A Shah, held that the petitioner shall be deemed to have been promoted as Superintendent from the date of his actual promotion. The Bench further held that since the petitioner was granted deemed date of promotion of May 1, 1959, as officiating Sr. Assistant, he shall be placed above his immediate junior-respondent Shri R.M Adalja, in the seniority list of Senior Assistants and Assistants. The appellant shall be deemed to have been promoted to the cadre of Superintendent on the date on which his immediate junior respondent-R.M Adalja was promoted and his name shall be placed above said Shri R.M Adalja in the seniority list of Superintendents [now Section Officers]. Further promotions of the petitioner be given on the basis of his re-fixed seniority as directed and he be given deemed date of promotion on the higher post. The Court also directed that the writ petitioner would be entitled to all consequential retiral and other benefits, including arrears of difference of salary on the basis of re-fixation of the seniority and the deemed date of promotion. In the event, the petitioner had retired, he should be given all the pensionary benefits also on the

basis of re-fixation of the seniority and deemed dates of promotion. The aforesaid direction was ordered to be carried out within a period of three months from the date of the receipt of the writ of the Court. Feeling aggrieved by the aforesaid judgment and order of the Bench, the Government preferred an Appeal before the Hon'ble Supreme Court. The Supreme Court rejected the Special Leave Petition on 27th February, 1987. However, State, was given four months' more time from the date of expiry of the time given by the High Court for implementing the order passed by the High Court. It appears that the said directions were not complied with within the stipulated period. The petitioner, therefore, filed Misc. Civil Application No. 631 of 1988 under the Contempt of the Courts Act, 1971. The said application came up for hearing before the Bench on 28th December, 1989. The petitioner made a categorical statement to the effect that all the payments, pursuant to the order of this Court in Letters Patent Appeal, were paid to the petitioner. However, he raised three more claims ie., (a) the interest on the delayed payment of gratuity, pension, etc., (b) deputation allowance of Rs. 250/= p.m and (c) advance increment. The Court observed that for these three claims, the petitioner may file a substantive petition. Pursuant to the said observation, the petitioner has preferred the present petition. The petitioner has prayed that : (a) the order made on Letters Patent Appeal No. 77 of 1979 be implemented in letter and spirit and all consequential monetary benefits in respect of the petitioner's remaining grievance be redressed. (b) The petitioner be paid interest @ 18% for the delayed payment of the amounts of pay and allowances, pension, gratuity with effect from 1st August, 1984 [i.e., from the date of expiry of two months from the date of his retirement] till the date of the actual payment. (c) The Gujarat Water Supply & Sewerage Board be directed to re-fix the pay of the petitioner taking into consideration Rs. 250/= as Special Pay, treated as Deputation pay, as authorised by the Accountant General and to pay the amount of difference with 18% interest thereon for the period from 19th August, 1985 till the date of actual payment. (d) The petitioner be given advance increment at the appropriate stage of his pay and to revise his pay, pension and other retiral benefits, including commutation of pension, D.C.R.G., Family pension, etc. and to pay the interest on the difference of amount with effect from 1st August, 1984 till the date of actual payment. (e) The petitioner be given the benefit of stepping up of pay with effect from 1st January, 1973; and (f) the service rendered by the petitioner as Government Probationary Officer with effect

from 9th January, 1951 till 19th November, 1952 be treated as pensionable service and consequently his pension and other retiral benefits be re-determined and the petitioner be paid the difference of amount alongwith interest.

The petitioner's claim for counting the service rendered as Government Probation Officer from 9th January, 1951 to 19th November, 1952 and the consequential reliefs for re-fixation of the retiral benefits and the payment of interest thereon requires to be rejected on the ground of delay, laches and acquiescences alone. The petitioner has raised the said demand for the first time in the present petition i.e., in the year 1990 i.e. long after he retired from service. Besides, the cause of action did exist when he preferred the writ petition being Special Civil Application No. 1573 of 1975, yet he did not raise the demand nor did he claim the said relief. The relief claimed in this respect is, therefore, barred by the principles of constructive res judicata also. The prayer for stepping up of Pay with effect from 1st January, 1973 also requires to be rejected on the same grounds i.e., delay, laches and constructive res judicata.

As regards 'advance increment' demanded by the petitioner, it appears that the same is based on 'Flood Relief Work' rendered by the petitioner in the year 1968 or thereabout. It appears that in the year 1968, the State of Gujarat experienced heavy flood and certain Government servants rendered exemplary services in the flood relief works. After considering the service rendered by them, some of such officers were rewarded by giving them advance increments, while the petitioner was rewarded by issuing an 'appreciation note'. The said note was issued to the petitioner on 29th July, 1970 [Annexure 'E' to the petition]. Be it noted that the cause of action arose in the year 1968 and in the year 1970. Though some other officers were rewarded by grant of 'advance increment', the petitioner had been rewarded by the 'appreciation note' without any monetary benefit thereon. The cause of action did exist when the petitioner preferred Special Civil Application No. 1573 of 1975. It is not known whether the petitioner claimed the said relief in Special Civil Application No. 1573 of 1975. Be that as it may, whether the relief was prayed for and not granted or the relief was not prayed at all; in either case, the relief claimed in the present petition shall be barred by constructive res judicata. Besides, the claim made by the petitioner has also been contested by the State Government. It is stated in the

affidavit made by the Secretary, Road & Building Department that the service rendered by all the Government officers in the Flood Relief works was evaluated and considering the performance of each of the officers, they were suitably rewarded i.e., some of them were rewarded by grant of advance increment, while those like the petitioners, were rewarded by issuing the 'appreciation certificates'. The confirmment of reward cannot be claimed as a matter of right. If the Government has evaluated the petitioner's performance and has not considered him fit for monetary reward, the judgment of the Government has to be respected. This Court cannot sit in appeal over the judgment of the Government and substitute the same by its own. Besides, the relief claimed in the year 1990 is grossly belated and requires to be rejected on the ground of delay, laches and acquiescence alone.

It appears that while in government service, the petitioner's service was transferred to Gujarat State Legal Aid & Advisory Board as a Law Officer. The petitioner served as a Law Officer with the said Board on deputation from 1st January, 1984 to 31st May, 1984. By an order dated 18th October, 1988 [Annexure 'L' to the petition], deputation allowance of Rs. 250/= p.m was allowed to the petitioner for the said period of 1st January, 1984 to 31st May, 1984. Pursuant to the said order, the Office of the Accountant General, by its order dated 23rd May, 1989, revised the pension and the D.C.R.G due and payable to the petitioner on his retirement with effect from 1st June, 1984. The amount of difference of deputation allowance, D.C.R.G, etc. has been paid to the petitioner on 27th October, 1988 and 5th April, 1989 respectively. It is the claim of the petitioner that his last pay having been thus revised, his pay on re-employment by the Gujarat Water Supply & Sewerage Board shall be accordingly revised and the petitioner be paid the amount of difference of salary with interest for the delayed payment. Reliance has been placed on Rule 330 of the Bombay Civil Services Rules. It is contended that the deputation allowance received by the petitioner in the Gujarat State Legal Aid & Advisory Board was part of his pay and on the basis of the last pay received by him, his pay on re-employment should have been fixed. The contention is protested. It is contended that the petitioner's pay on re-employment had been determined keeping in view the provisions contained in Rule 330 of the Bombay Civil Services Rules. I am unable to agree with the claim made by the petitioner. Rule 330 of the BCSR refers to the re-employment of a person in respect of a superannuation or retirement pension in service paid

from Consolidated Fund of India or of a State or a Local Fund. That is, Rule refers to reemployment of a person already retired from service to a service under the State. The petitioner, admittedly, was not re-employed in service under the State. It was the Gujarat Water Supply & Sewerage Board which had re-employed the petitioner. Though the said Board may be the 'State' within the meaning of Article 12 of the Constitution of India, the service in the Board cannot be said to be 'service under the State'. In my view, the above referred Rule 330 shall not apply in case of re-employment in service other than the service under the State. The claim is, therefore, rejected.

This brings me to the last and substantive relief claimed by the petitioner. The petitioner has prayed that the directions issued by the Division Bench in Letters Patent Appeal No. 77 of 1979 be implemented in its true perspective. I believe the relief claimed is misconceived. In the course of hearing of the Contempt petition ie., Misc. Civil Application No. 631 of 1988, the petitioner had on 28th December, 1989, made a categorical statement before the Court that, 'nothing remains to be paid to the petitioner as per the order in Letters Patent Appeal'. Having made the aforesaid statement on 28th December, 1989, the petitioner could not have made a grievance that the order has not been complied with in its true perspective.

The question that now remains is in respect of the delay in payment of difference of salary, pension, gratuity and other retiral benefits. It is contended that since the petitioner had retired on 1st June, 1984, the aforesaid amounts ought to have been paid to the petitioner within two months ie., before 1st August, 1984. That having not been done, the petitioner is entitled to interest on the said amount with effect from 1st August, 1984 till the date of payment thereof. The claim is not sustainable. As observed hereinabove, the claim arises of the deemed promotion and consequent seniority ordered by the Court on 1st December, 1986 in Letters Patent Appeal No. 77 of 1979. The aforesaid amounts, therefore, had not accrued to the petitioner till that date. The petitioner's right to receive the said amounts was crystallized only when the directions to that effect were issued by the Bench on 1st December, 1986. Besides, the Court had permitted two months time for complying the said order, from the date of the receipt of the writ. The aforesaid time was further extended by the Hon'ble Supreme Court by its above

referred order dated 27th February, 1987. It is not known the date on which the writ was received by the State. However, in the counter-affidavit, it is mentioned that 3rd June, 1987 was the last date for compliance with the directions issued by the Bench on 1st December, 1986. Obviously, the said directions have not been complied with within the time stipulated. It is, however, explained that the petitioner had been given deemed promotion to the post of Sr. Assistant with effect from 1st May, 1959 i.e., the State Government had to revise the pay-fixation orders, the seniority, the dates of further promotion beginning from the year 1959. Some of the records had to be recovered from the State of Maharashtra also. Besides, the petitioner was called upon to exercise the option which he did not do for 10 months. The payments which were to be made by 3rd June, 1987 appears to have been made during the months of October, 1988, December, 1988 and April, 1989. Besides, the petitioner had also been paid the interest for the delayed payment of the amount of difference in D.C.R.G. Thus, though there has been some delay of around 18 months in payment of the entire amount of difference of pay, pension and other retiral benefits, the substantial part of it i.e., 10 months is attributable to the petitioner himself. Besides, from what is stated in the counter-affidavit, it appears that the respondents cannot be said to be indifferent or callous in carrying out the order made by this Court. I, therefore, do not consider it to be a fit case for awarding interest on the aforesaid delayed payment of difference of pay, pension and other retiral benefits.

In view of the above discussion, the petition is dismissed. Rule is discharged. There shall be no order as to costs.

Prakash*